

**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES**

First Named Inventor	:	Bran FERREN
Serial No.	:	10/750,189
Filed	:	December 30, 2003
Art Unit	:	3664
Confirmation No.	:	9149
Examiner	:	Brian J. Broadhead
Title	:	MODULAR VEHICLE
Attorney Docket No.	:	APPL0031

August 23, 2010

MAIL STOP: REPLY BRIEF - PATENTS
Honorable Commissioner of Patents & Trademarks
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REPLY BRIEF

Appellant's Reply brief to the Examiner's Answer, dated June 25, 2010¹, follows.

STATUS OF CLAIMS

The status of the claims is as follows:

Claims 1, 3-6, 8, 14-16, 18 are rejected. Each of these claims is on appeal.

Claims 2, 7, 9-13 and 17 are cancelled.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds for rejection are to be reviewed on appeal:

1. Whether the subject matter of Claims 1, 3-6, 8, and 14 is unpatentable under 35 U.S.C. 103(a) over Kempen *et al* (USPN 6,421,593) in view of Jacob (USPN 6,547,506).
2. Whether Claims 15, 16, and 18 are unpatentable under 35 U.S. C. 103(a) over Kempen *et al* (USPN 6,421,593) in view of Glatzmeier *et al* (USPN 5,785,372).
3. Whether Claims 6, 8, 14-16, and 18 are indefinite under 35 USC § 112 ¶ 6 for failing to point and distinctly claim the subject matter which Applicant regards as the invention.

ARGUMENT

Appellant respectfully replies to the Examiner's answer brief, dated June 25, 2010, as follows:

Claims 1, 3-6, 8, and 14 are not unpatentable under 35 U.S.C. 103(a) over Kempen *et al* (USPN 6,421,593) in view of Jacob (USPN 6,547,506)

In connection with the following reply, Appellant directs the Board to Appellant's claim language, which is really at issue here in determining the propriety of the Examiner's rejection in view of prior art. Any pertinent remarks of the Examiner in the Answer appear on pages 28-30 thereof.

As noted in Appellant's earlier submission, the Examiner dwells on the notion that Kempen provides what are considered to be "modules," that these "modules" may be different from each other, and that the chassis that Kempen teaches may receive different ones of these "modules." Appellant has never disputed that Kempen allows interchangeable truck bodies on the chassis. The Examiner seems to be stating that a module is a module and that modularity is modularity for all purposes, and that once modularity is shown in one reference no distinctions can be made even where, as here, a substantially different approach is taken to modularity.

As such, the Examiner states that: "It is not really clear what point Appellant is trying to make."

Appellant's point is quite simple: Appellant's Claim 1 states: "Each [said module's size] is a standardized fraction of the total area of said platform." In his Answer (nor anywhere else for that matter), the Examiner does not address this critical structural distinction between the art of record and the claimed invention. The Examiner instead

accuses the Appellant of attacking the references individually. However, it is entirely proper for the Appellant to consider the Examiner's basis for asserting each reference and remarking on the merits of such assertions. Here, singly or in combination, the references do not teach that which the Appellant has claimed. Absent a teaching somewhere among the references relied upon by the Examiner of each and every element of Appellant's claimed invention the rejection is fatally flawed for failing to establish a *prima facie* showing of obviousness.

Again, the Examiner is conflating the modularity of Kempen and the bins of Jacobs with Appellant's invention in which: "Each [said module's size] is a standardized fraction of the total area of said platform."

On this point, the Examiner is silent.

Appellant also notes that Appellant's modular vehicle as claimed requires: "At least two modules, each module providing a unique function, each module comprising a standardized fraction of the total area of said platform, said modules when affixed to said platform comprising in combination a vehicle suited for particular use, said modules having in combination an area totaling no more than the area of said platform . . ."

On this point, the Examiner is silent.

Accordingly, Appellant has not claimed a single body that may be placed on truck chassis, or even a series of different bodies, each one of which may be placed on truck chassis. Rather, Appellant is claiming modules that are a standardized fraction of the total area of a platform in a system, where the platform receives at least two of such modules. By no stretch of the imagination does Kempen suggest this. The bodies in Kempen are not a fraction of the total area of the chassis but, rather, equal to the area of the chassis of Kempen. Further, there is no notion in Kempen that multiple modules have a standardized fraction of the total area of the platform and can be combined on a vehicle to dedicate the vehicle to particular use. At best, Kempen teaches a technique that embodies the problem that the Appellant's invention has addressed. That is, that it is only known to have

interchangeable truck bodies.

On this point, the Examiner is silent.

Continuing on Page 29 of the Examiner's answer, Appellant does not understand the Examiner's point that the fact that the fixation points in the invention are different from those of the reference somehow or another amounts to attacking the references individually. However, Appellant thanks the Examiner for admitting that Kempen does not teach attachment points for multiple modules. The Examiner states that the secondary reference (Jacobs) teaches multiple modules. The Examiner gives this point short shrift. As Appellant pointed out in previous submissions, the Examiner has misstated Appellant's argument and Appellant's claim language. Appellant points out that in Kempen, where a single "module" is possible, and there is no other possibility, it is only necessary to provide a single set of connectors, as taught in Kempen at column 28, line 67. Appellant has claimed a "plurality of fixation sites along said platform, said fixation sites comprising standardized interconnection means" The Examiner has seized upon the fact that Appellant has crafted the claim in such a manner that the interconnection means can be any of "mechanical, electrical, and fluid connection . . ." interconnection means. However, it is disingenuous of the Examiner to indicate that the Appellant's argument mischaracterizes Appellant's claims. It is clear in Kempen that this is not necessary because Kempen does not require interconnection to a plurality of modules where "each module comprises a standardized fraction of the total area of said platform."

Further, contrary to the Examiner's assertions, Jacob, does not teach multiple fixation sites. Jacob's components either comprise the entire truck payload, or are attached not to the vehicle platform but to a slide plate, which is simply a steel plate that is attached to a bare vehicle frame in one and only one location. Jacob's "substitute body" on which are mounted the components the examiner cites (vacuum pump, tank, and backhoe) variously comprises a slide plate 72 on which multiple cooperating components can be mounted (col. 3, lines 5-8) or a collection of components attached to each other in an unexplained fashion (col. 3, lines 38-45). Each of Jacob's options comprise a single

component attached to the truck body, whether a slide plate or the body itself, as in Fig 4. There is no example of multiple modules being attached directly to the truck. In Fig 3, they must at a minimum be first bolted to the slide plate 72 (which does not teach multiple attachment points at standardized intervals) and it is that plate which is attached to the truck. In Fig 4, the components are hauled onto the vehicle platform as a single "substitute body" (SB) comprising the entire payload.

Also, Jacob's bins in Figures 1 and 2 do not have any of mechanical, fluid or electrical connections. Because there is no mention of locking mechanisms, they are held in place only by gravity.

Lastly, the examiner mentions standard pallet size on tractor trailers as an example of prior art, but pallets are not known to be attached to the truck trailer. Rather, they are just held to the bed with straps. Thus, this gratuitous assertion of the state of the art (perhaps an improper Official Notice) is without merit.

Claims 15, 16, and 18 are not unpatentable under 35 U.S. C. 103(a) over Kempen *et al* (USPN 6,421,593) in view of Glatzmeier *et al* (USPN 5,785,372)

The combination of Kempen and Glatzmeier does not teach multiple modules. As noted above, Kempen only teaches replacement of the entire vehicle body. While the Examiner makes note of the teachings of Jacobs and characterizes Jacobs as disclosing modules that can connect with a vacuum pump, vacuum tank, and backhoe, the Examiner's citation at column 3, lines 32-37 belies the teaching the Examiner asserts Jacobs provides. Jacobs actually states, at line 27, "a substitute truck body SB can then be mounted on and attached to the slide plate (72) and hydraulically locked thereon, thus allowing the chassis (70) to be used with a different truck body, such as a garbage truck body." This preamble to the Examiner's citation makes it clear that the teaching of Jacobs adds nothing to Kempen, which, as noted above, is highly deficient in teaching the claimed combination. As for the vacuum pump, vacuum tank, and backhoe, these are mounted to

a slide plate of an interchangeable body in Jacobs. Appellant does not understand how this has anything to do with Appellant's plain and unequivocal teaching of "at least two modules, each module providing unique function, each module comprising a standardized fraction of the total area of said platform . . ."

Appellant also notes that the Examiner's reliance on Jacobs and Kempen ignores the requirement for a "control and communication protocol."

Claims 6, 8, 14-16, and 18 are not indefinite under 35 USC § 112 ¶ 6 for failing to point and distinctly claim the subject matter which Applicant regards as the invention

Appellant notes that the genesis of this New Ground of Rejection is an order remanding the appeal to the Examiner from the Board. As noted at MPEP 1207.03, prosecution may be reopened when such New Ground of Rejection is made. The New Ground of Rejection here extends from pages 3-13, the Examiner not having taken the initiative to reopen prosecution to resolve this issue, or at least to bring it into better form for consideration by the Board. Nonetheless, for the sake of expediency, Appellant elects to maintain this appeal and does not request that prosecution be reopened. Appellant may, in a later proceeding before the Patent Office, present claims of similar scope to those of Claims 6, 8, 14-16, and 18, but amended to address any legitimate issues that may exist under 35 USC § 112 ¶ 6.

In view of the foregoing, and with reference to Appellant's brief and the record herein, Appellant respectfully submits that the Examiner is in error in regarding the cited references as teaching the claimed invention. At the very least, substantial elements of the claimed invention are not shown anywhere in any of the references, either alone or in combination. Further, there is nowhere a teaching or suggestion that the references could be combined. As such, there is nothing to motivate a person skilled in the art to combine the references as asserted by the Examiner.

Accordingly, Appellant respectfully requests that the Board favorably receive Appellant's remarks and reverse the Examiner's holdings.

The Commissioner is authorized to charge any additional fees or credit any overpayments to Glenn Patent Group Deposit Account 07-1445 (Order No.: APPL0031).

Respectfully submitted,



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